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## 2009 Decisions

Opinions of the United  
States Court of Appeals  
for the Third Circuit

7-30-2009

# Jay Doroshow v. Hartford Life and Accident Ins

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**PRECEDENTIAL**

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 08-2836

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JAY DOROSHOW,

Appellant.

v.

HARTFORD LIFE AND ACCIDENT INSURANCE CO.

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On Appeal from the United States District Court  
for the Eastern District of Pennsylvania  
(D.C. No. 2-08-cv-00259)  
District Judge: Honorable Robert F. Kelly

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Argued on February 3, 2009

Before: RENDELL, JORDAN and ROTH, Circuit Judges.

(Opinion filed on July 30, 2009)

Scott I. Fegley, Esquire (**Argued**)  
Suite 402 A  
301 Oxford Valley Road  
Makefield Executive Quarters  
Yardley, PA 19067

Counsel for Appellant

Brian P. Downey, Esquire (**Argued**)  
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One Keystone Plaza, Suite 200  
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Stacey I. Gregory, Esquire  
Pepper Hamilton, LLP  
18<sup>th</sup> & Arch Streets  
3000 Two Logan Square  
Philadelphia, PA 19103

Counsel for Appellee

**ROTH, Circuit Judge:**

**ORDER AMENDING SLIP OPINION**

**IT IS ORDERED** that the published Opinion in the above case, filed on July 30, 2009, be amended as follows:

**On page 5**, delete the following paragraph:

Following this test, Doroshow visited Leo McCluskey, M. D., and ALS specialist, on July 27, 2005. Dr. McClusky wrote that "Doroshow demonstrates evidence of a lower motor neuron process affecting his right leg" and that "[h]e has no upper motor neuron signs." Accordingly, Dr. McClusky felt that "[t]hese are features that do not support the diagnosis of amyotrophic lateral sclerosis or a progressive motor neuron disorder." Doroshow was under Dr. McClusky's treatment for motor neuron disease between April 1, 2000, and June 30, 2006. Dr. McClusky was ultimately the doctor who diagnosed Doroshow with ALS on May 15, 2007.

and **replace it with:**

Following this test, Doroshow visited Leo McCluskey, M. D., and ALS specialist, on July 27, 2005. Dr. McCluskey wrote that "Doroshow demonstrates evidence of a lower motor neuron process affecting his right leg" and that "[h]e has no upper motor neuron signs." Accordingly, Dr. McCluskey felt that "[t]hese are features that do not

support the diagnosis of amyotrophic lateral sclerosis or a progressive motor neuron disorder." Doroshow was under Dr. McCluskey's treatment for motor neuron disease between April 1, 2000, and June 30, 2006. Dr. McCluskey was ultimately the doctor who diagnosed Doroshow with ALS on May 15, 2007.

By the Court,

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/s/ Jane R. Roth

Circuit Judge

Dated: July 30, 2009

smw/cc: Scott I. Fegley, Esq.  
Brian P. Downey, Esq.  
Stacey I. Gregory, Esq.